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In re Application of
Forsberg et al.
Application No. 10/642,817
Filed: August 19, 2003
Title of Invention: Candle Wick
Maintenance Instrument

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(f) for failure to notify the Office of Foreign or International Filing, filed September 19, 2005, to revive the above-identified application. This application is properly treated as a petition under 37 CFR 1.137(b).

This above-identified application became abandoned for failure to timely file a reply to an Office Action mailed February 11, 2005. The Office Action set a one (1) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). An untimely response to the Office Action was filed on March 21, 2005. Accordingly, this application became abandoned on March 12, 2005. A Notice of Abandonment was mailed on September 7, 2005.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

Petitioner has requested that the petition fee in the amount of \$750.00 be waived or at minimum a more reasonable fee be assessed.

The Office notes:

35 U.S.C. 41(a) (7) provides that a petition for the revival of an unintentionally abandoned application or for the unintentionally delayed payment of the issue fee must be accompanied by the petition fee set forth in 37 CFR 1.17(m), unless the petition is filed under 35 U.S.C. 133 or 151

(on the basis of unavoidable delay), in which case the fee is set forth in 37 CFR 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding of abandonment (i.e., it is determined that the application is not properly held abandoned), the payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived.

In addition, the phrase "[o]n filing" in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this section are due on filing the petition"). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(l) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By facsimile: (571) 273-8300

By delivery service: U.S. Patent and Trademark Office
(FedEx, UPS, DHL, etc.) Customer Window, Mail Stop Petition
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.



Charlema R. Grant
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Office of Petitions